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Denise M. Sheehan
Commissioner

August 21, 2005

Minerals Management Service
MS 5412
1201 Elmwood Park Blvd.
New Orleans, Louisiana 70123

RE: Comments on EIS Scoping for the LIOWP Project

Dear Sir/Madam:

This letter is being submitted by the New York State Department of Environmental Conservation ("Department") in response to the Notice of Intent issued by the Minerals Management Service ("MMS") that appeared in the Federal Register on June 19, 2006 for the Long Island Off Shore Wind Park ("LIOWP"). The Notice of Intent indicated that MMS is planning prepare an environmental impact statement (EIS) and seeks scoping comments regarding alternatives, resources within the project area, impacts and mitigation.

The Department has been engaged in the review process for the LIOWP since its inception by the Long Island Power Authority in 2002. Over that time the Department has provided input in the form of comments, both written and verbal, and supplied data and information regarding the natural resources within the project area. The Department's input included a letter submitted to the Corps of Engineers on August 12, 2005. More recently, the Department submitted a comment letter on the programmatic EIS process also being managed by MMS with similar comments included in the August 12, 2005 letter.

Many of the comments provided below again address many of the same issues covered in the Department's previous letters. In this particular letter the Department tried to add additional guidance on the studies that should be required to determine the baseline of the natural resources within the project area and the potential impacts to these resources from the project.

Resources

As indicated in the Department's August 12, 2005 letter to the Corps of Engineers the Department supports the development of an EIS to fully assess the potential impacts of the project. As indicated in the public notice the resources and issues to be analyzed in the EIS are numerous and varied. The Department's primary concern is with the protection of the natural resources and species within the Outer Continental Shelf area within New York State, on both water and land. In order to begin to assess the impacts of all portions of the project a baseline of

the natural resources must be developed. Provided below are descriptions of the natural resources of concern. The Department has also been provided by the project sponsors a list of the studies completed to date. Therefore, also provided below are comments regarding adequacy of the current studies.

Avian. The area off the south shore of Long Island is a significant area for avian resources. The bird groups likely to be present in the project area, either for nesting, feeding or migration, include pelagic seabirds, gulls and terns, sea ducks, divers, shorebirds, raptors and passerines. It is critical that the project sponsors collect adequate levels of data to provide baseline information on, the quantity of birds in the project area, how they are using the site, and the temporal and spatial patterns of usage.

Studies. The Department has reviewed the Avian Study Protocol prepared by the project sponsor's avian consultant, dated May 9, 2006. The protocol discusses the various means for collecting avian data within the project site in order to develop a baseline of information regarding avian use of the area. Four types of data collection are proposed by the project sponsor which include; 1) boat-based visual surveys; 2) aerial transect visual surveys; 3) evaluation of NEXRAD radar historical information; and 4) land-based and boat-based marine radar surveys. The project sponsors commenced the boat based and aerial surveys in 2004 and continued those studies until the present. The project sponsor has also conducted a fall marine radar survey in 2005 and a spring marine radar survey in 2006. The historical NEXRAD data is currently available but has yet to be analyzed. The protocol referenced above does not specify the frequency of the surveys in order to determine the baseline of avian resources in the project area. The Department contends that the project sponsor has completed an adequate number of boat-based and aerial surveys. Further, the Department supports the use of NEXRAD data to establish passage rates and flight height. In order to adequately develop the baseline of avian use within and around the site, the project sponsor should conduct another full year of marine radar surveys. The additional data will also provide a better picture of any yearly variations in the pattern of use within and around the project area. Marine radar provides a far better and more consistent picture of the patterns of use within the project area than visual surveys alone. As the radar unit operates continuously while it is deployed, information on both nocturnal and diurnal bird movements in the horizontal and vertical axis can be recorded and analyzed. In general, the marine radar can more fully detect passage rates over a much larger area than the aerial and boat-based surveys alone. Further, the marine radar also allows for the collection of data during the nighttime when visual surveys would not be practical. The sponsor has met with DEC to present data collected to date. Information was provided on the presence and movements of water birds such as gulls, terns and sea ducks during fall, winter and spring. However, as much of the data relied on diurnal visual observations, there has been little discussion on the use of the project area and nearby coastal habitats by passerines, raptors and bats. The potential for impact by the construction of an off-shore wind park on these groups, especially migrating passerines, is relatively unknown. Based on the above the Department recommends that the project sponsor conduct at least one more marine radar survey during each of the following seasons; Fall 2006 (Mid August – October 15), Winter 2007 and Spring 2007 (April 15 – June 1). Emphasis should be placed on studying nocturnally migrating passerines. (If the project sponsor is unable to survey during Fall 2006 the fall survey should be completed in Fall 2007. Preferably, the marine radar should be located on a jack-up barge within or in close proximity to the project area. The Department is available to discuss the details of these additional radar surveys.

Shellfish/Benthic. Off the south shore of Long Island, the Department is concerned with the potential impacts of the project on shellfish resources. Within the area 3 miles off of Jones Beach, the state has a very productive surf clam industry. Within the Bay, the Town of Babylon

has been seeing an increase in hard clam landings over the years. Therefore, the applicants should identify the locations of potentially impacted shellfish resources both inshore and offshore. This information should include seasonal variations or constraints.
Studies. Historical information exists but the applicants should also conduct field sampling in the project areas to better determine potential impacts. The project sponsor conducted a field survey within the wind park area by taking approximately 60 grab samples during the month of August 2005. In addition, sediment profile images and seabed video acquisition studies were also conducted. The Department has not been provided any specific information regarding surveys completed in the near shore areas, along where the proposed transmission cable would be located. The Department would recommend at least one sampling station every ½ mile, with replicates at each station. Bull rakes should also be used in the near shore areas to determine shellfish populations. The Department would also recommend that samples also be taken along the alternative proposed transmission routes to allow for a comparison of the resources.

Finfish. The Department is concerned with the potential impacts the projects may have on recreational and commercial fisheries within the project area. It is important for the applicant to develop a baseline of the seasonal finfisheries resources to be potentially impacted by the project. This information would include species type, life stage and abundance within the project areas. In addition, the applicants need to develop baseline data relative to fishing usage of the area, both commercial and recreational.
Studies. Historical finfish data is available for the south shore of Long Island. The Corps of Engineers collected trawl data from 1999-2002 east of the project site. National Marine Fisheries also maintains a data base on commercial fisheries. NMFS collects landings data from commercial fisherman. New York Sate does not collect landing information. The historical information available on finfish in the vicinity of the project should be sufficient to develop a baseline of the resource.

Marine and Terrestrial Vegetation. Areas of aquatic vegetation are important to the overall health and sustainability of the marine environment. It is important for the applicants to document the presence of marine vegetation through historical information and field surveys. Terrestrial vegetation will also need to be identified along the transmission route. Included in this evaluation are the presence of any tidal and freshwater wetlands along the transmission route and any rare, threatened and endangered species.
Studies. Existing data bases will identify areas of concern but only field surveys will precisely identify the locations of significant vegetation. The project sponsor is proposing field surveys that consist of visual inspection, fathometer and bull rakes. All potentially impacted tidal wetlands must be delineated and mapped. The Department would recommend a survey of the alternative routes for a means of comparison in the level of impact.

Geologic/Sediment Conditions. The existing geology and sediment conditions should be determined in the project areas. This will be necessary to determine potential installation impacts.
Studies. The Department will limit their comments on this particular issue to the areas of the project in New York State waters. The project sponsor should obtain one sediment sample for each ½ mile of transmission line. The project sponsor should comply with the sampling and testing guidelines provided in the Department's Technical and Operation Guidance Series (TOGS) 5.1.9.

Marine Mammals and Turtles. The EIS should identify any critical areas for marine mammals and turtles in the near and far shore areas. The project sponsor should consult with the

Department's Marine and Endangered Species Program to determine what current information is available. In addition, within in New York State waters the Riverhead Foundation of Marine Research tracks marine mammal sightings.
Studies. The project sponsor has indicated they will rely on historical data and any data gathered during the avian boat surveys. This is the likely to be the best information available to establish a baseline on marine mammals and turtles.

Rare, Threatened and Endangered (RTE) Species. The EIS should include information on rare, threatened or endangered species within the project area. Within the near shore areas of New York State, the Department has documented the following RTE avian species: the piping plover, red knot and roseate tern. RTE marine mammals and turtles that have been identified in the waters within New York State include: North Atlantic right whale, finback whale, blue whale, sei whale, humpback whale, sperm whale, Kemp's Ridley sea turtle, leatherback sea turtle, loggerhead sea turtle, and green sea turtle.
Studies. The project sponsor should ensure that any field studies or historical information compiled for each of the categories above address any of the above referenced RTE species.

Parks, Recreation and Historic Preservation. The EIS should identify the important state park, recreation and historic resources that may be impacted by the proposed project. The applicant should refer to the Department's policy, Assessing and Mitigating Visual Impacts (7/31/2000) for the state resources that should be considered in the visual analysis. The policy can be reviwed at the following website: http://www.dec.state.ny.us/website/dcs/policy/visual2000.pdf
Studies: A visual analysis should be completed in accordance with the above referenced policy.

Impacts

The Department believes the EIS for the LIOWP MMS should address the following potential impacts;

Seabed. The EIS should address the impact of seabed disturbance from the installation, operation and decommissioning of the project. This includes the installation of the monopiles pilings, scour protection and the transmission lines. The EIS should also address the potential for scour around the monopiles. The discussion should address the suspension of sand and sediment due to scour and the potential impacts to water quality and benthic organisms. Mitigation measures to prevent scour (i.e., scour mats) should be thoroughly explored.

Noise/Vibrations. The construction and operation of the wind park will create noise and vibration impacts on the marine environment. The EIS should address these potential impacts on the resources, particularly on marine mammals.

Physical Oceanographic Conditions. Consideration of impacts on waves, currents and sediment transport from the installation and operation of the project should be given in the EIS. As the agency responsible for administering the coastal erosion program in New York State, the Department is concerned with the long term potential impacts on the physical oceanographic conditions.

Water Quality. Water quality could be impacted in several ways in the OCS region from the installation, operation and decommissioning of the project. As discussed above, the installation of permanent structures could create a scour affect that could suspend sand and sediment in the

water column. In addition, the EIS should address the potential for petroleum spills during construction/installation, and from installed equipment.

Rare, Threatened and Endangered (RTE) Species. The proposed project has the potential to impact the above referenced RTE species. The EIS should specifically address each of these species and the potential impacts the project may have upon them. This includes the above referenced impacts such as noise, water quality, etc.

Exclusion Zones. The Cape Wind EIS and documents prepared for the Long Island Offshore Wind Park (LIOWP) discuss the possibility of exclusion zones within the wind power projects. The impacts of any required exclusion zones on commercial and recreational fishing should be discussed.

Noise. The marine environment will be impacted by the noise generated from the construction and operation of the project. The EIS should address the potential noise impacts including projected noise levels, frequency and duration from the project.

Visual. As discussed above, the installation of the turbines may have significant visual impacts on significant historic and recreational resources.

Alternatives

The Notice of Intent indicates the EIS will review the proposed project, the no action alternative and other alternatives identified in scoping including, but not limited to, modifying the size or configuration of the project, phasing the development, or the use of alternative sites. The Department supports these suggested alternatives. The Department would also the support the review of the alternative of other renewable energy technologies.

Mitigation

The Notice of Intent also requests state and local agencies to provide comment on the mitigation of any impacts. The Department will reserve comment on mitigation strategies until a complete analysis of the potential impacts has been included in the EIS. The Department will review and comment on any suggested mitigations strategies addressed in the EIS.

The Department appreciates the opportunity to comment on the scope of the EIS and looks forward to working with MMS and the other resource agencies in the development and review of the EIS for the LIOWP. If you have any questions regarding the comments provided above please contact me at the number provided or Chris Hogan of my staff at (518) 402-9151.

Sincerely,

Jack A. Nasca
Chief, Energy and Projects Management
Division of Environmental Permits

cc: D. May, DPS
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